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FILED

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RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADR

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SANDRA BAXTER,

) Case No.

Plaintiff

) COMPLAINT AND DEMAND FOR  
JURY TRIAL (Unlawful Debt  
Collection Practices)

v.

)

CREDIT CONSULTING SERVICES, )  
INC., a corporation; HERENDEEN & )  
BRYAN, a professional corporation; )  
and DOES 1 through 10 inclusive, )

Defendants.

)

)

)

C08 02532

RS

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer against Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* ("FDCPA") and the California Rosenthal Act, Civil Code §1788 *et seq.* ("Rosenthal Act") both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair

1 practices.

2

3 **II. JURISDICTION AND VENUE**

4 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C.  
5 §1337. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367.  
6 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this  
7 District is proper in that the Defendants transact business here and the conduct complained of  
8 occurred here.

9

10 **III. PARTIES**

11 3. Plaintiff SANDRA BAXTER is a natural person residing in California.

12 4. Defendant CREDIT CONSULTING SERVICES ("CCS") is a California  
13 corporation doing business of collecting consumer debts owed to another, with its principal  
14 place of business located at 201 John St., Suite E; Salinas, CA 93901.

15 5. Defendant HERENDEEN & BRYAN ("H&B") is a professional corporation  
16 regularly engaged in attempting to collect debts owed to another through litigation in this  
17 state; its principal place of business is 119 Cayuga Street; Salinas, CA 93902.

18 6. Defendants are all engaged in the collection of debts from consumers using the  
19 mail and telephone and regularly attempt to collect consumer debts alleged to be due to  
20 another. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. §1692a(6),  
21 and by the Rosenthal Act, California Civil Code 1788.2(c).

22 7. The true names and capacities, whether individual, corporate (including officers  
23 and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through  
24 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such  
25 fictitious names. Plaintiff is informed and believes, and alleges that each Defendant  
26 designated as a DOE is involved in or is in some manner responsible as a principal,  
27 beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or  
28 otherwise, for the agreements, transactions, events and/or acts hereinafter described, and

1 thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the  
2 true names and capacities of these DOE Defendants are ascertained, they may be inserted in  
3 all subsequent proceedings, and that this action may proceed against them under their true  
4 names.

5 8. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

6 9. The purported debt that Defendants attempted to collect from Plaintiff was a  
7 "debt" as defined by the FDCPA, 15 U.S.C. §1692a(5).

8 10. Plaintiff is a "debtor" as defined by the Rosenthal Act, California Civil Code  
9 §1788.2(h).

10 11. The purported debt which Defendants attempted to collect from Plaintiff was a  
11 "consumer debt" as defined by the Rosenthal Act, California Civil Code §1788.2(f).

#### 12 IV. FACTUAL ALLEGATIONS

13 12. The FDCPA was enacted to "eliminate abusive debt collection practices by debt  
14 collectors, to insure those debt collectors who refrain from using abusive debt collection  
15 practices are not competitively disadvantaged, and to promote consistent state action to  
16 protect consumers against debt collection abuses."

17 13. At a time unknown, CSS acquired information regarding an alleged debt (the  
18 "Baxter Debt") on a hospital bill in Plaintiff's name which originated with George L. Mee  
19 Memorial Hospital ("the Hospital").

20 14. At a time unknown, CCS acquired information regarding an alleged debt ("the  
21 D'Auteuil Debt") on a hospital bill in the name of Rocky D'Auteuil which originated with  
22 the Hospital.

23 15. Plaintiff has never been married to Mr. D'Auteuil nor has she ever agreed to  
24 assume responsibility for any of his debts.

25 16. Originally, CCS would send a dunning letter to Plaintiff to collect on the Baxter  
26 Debt and then send a separate dunning letter to Mr. Dauteuil to collect on the D'Auteuil  
27 Debt.

1        17. When Mr. D'Auteuil stopped making payments on the D'Auteuil Debt, CCS  
2 added the D'Auteuil Debt to Plaintiff's account.

3        18. At a time unknown, CCS began calling Plaintiff to collect the Baxter Debt and  
4 the D'Auteuil Debt.

19. CCS called with such frequency and persistence as to constitute harassment.

6        20. CCS reported credit information to a credit bureau that it knew or should have  
7 know was false.

8       21. Plaintiff explained to CCS that she had never been married to Mr. D'Auteuil and  
9 was not responsible for his bills; CCS ignored Plaintiff and continued to attempt to collect the  
10 D'Auteuil Debt from Plaintiff.

11       22. On June 28, 2007, CCS sent a letter to Plaintiff demanding payment of both the  
12 Baxter Debt and the D'Auteuil Debt.

13       23. On September 20, 2007, Defendants filed suit in the Superior Court of  
14 California, County of Monterey, Case No. M86474 (the ACTION) and named Plaintiff as the  
15 only defendant.

16       24. The ACTION sought to collect the Baxter Debt and the D'Auteuil Debt from  
17 Plaintiff.

18 | 25. The complaint in the ACTION falsely stated the amount of the debt.

19       26. During discovery in the ACTION Defendants admitted that they were  
20 attempting to collect money on a debt that was not incurred by Plaintiff.

21       27. As a result of the acts alleged above, Plaintiff suffered great stress, worry, and  
22 emotional distress. Further, Plaintiff was forced to incur legal expenses in defense of the  
23 ACTION.

## **V. FIRST CLAIM FOR RELIEF**

**(Against all Defendants for Violation of the FDCPA)**

27       28. Plaintiff repeats and realleges and incorporates by reference all of the foregoing  
28 paragraphs.

1           29. Defendants violated the FDCPA. Defendants' violations include, but are not  
2 limited to, the following actions taken against the Plaintiff:

- 3           (a) Defendant CCS violated 15 U.S.C. § 1692d by engaging in conduct  
4                 the natural consequence of which is to harass, oppress, or abuse  
5                 Plaintiff in connection with the collection of the alleged debt;
- 6           (b) Defendant CCS violated 15 U.S.C. § 1692d(5) by causing the phone  
7                 to ring or engaging a person in telephone conversations repeatedly  
8                 with the intent to harass, oppress, and abuse the Plaintiff in connection  
9                 with the collection of the Debt;
- 10          (c) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive,  
11                 or misleading representations or means in connection with the  
12                 collection of a debt;
- 13          (d) The Defendants violated 15 U.S.C. § 1692e(2)(A) by giving the false  
14                 impression of the character, amount or legal status of the alleged debt;
- 15          (e) The Defendants violated 15 U.S.C. § 1692e(8) by communicating or  
16                 threatening to communicate credit information which is known or  
17                 which should be known to be false, including the failure to  
18                 communicate that a disputed debt is disputed;
- 19          (f) The Defendants violated 15 U.S.C. § 1692e(10) by using a false  
20                 representation or deceptive means to collect or attempt to collect any  
21                 debt or to obtain information regarding a consumer;
- 22          (g) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or  
23                 unconscionable means to collect or attempt to collect a debt;
- 24          (h) The Defendants violated 15 U.S.C. § 1692(f)(1) by attempting to  
25                 collect an amount not authorized by the agreement that created the  
26                 debt or permitted by law;

27           30. As a result of the above violations of the FDCPA, Defendants are liable to the  
28 Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs

1 pursuant to 15 U.S.C. §1692k.

2

3 **VI. SECOND CLAIM FOR RELIEF**

4 **(Against all Defendants for Violation of the Rosenthal Act)**

5 31. Plaintiff repeats, realleges and incorporates by reference all of foregoing  
6 paragraphs.

7 32. Defendants violated the Rosenthal Act, by including but not limited to, the  
8 following:

- 9 (a) Defendant CCS violated California Civil Code §1788.11(d) by  
10 causing a telephone to ring repeatedly or continuously to annoy the  
11 person called;
- 12 (b) Defendant CCS violated California Civil Code §1788.11(e) by  
13 communicating with the Plaintiff with such frequency as to be  
14 unreasonable and to constitute an harassment to the Plaintiff under the  
15 circumstances;
- 16 (c) The Defendants violated California Civil Code §1788.17 by failing to  
17 comply with the FDCPA as alleged above.

18 33. As a proximate result of Defendants' violations enumerated above, Plaintiff has  
19 been damaged in amounts which are subject to proof.

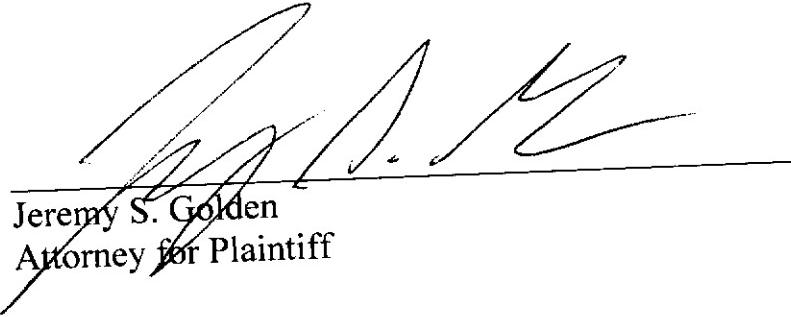
20 34. Defendants' violations of the Rosenthal Act were willful and knowing.  
21 Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages,  
22 and attorney's fees and costs pursuant to California Civil Code §1788.30.

23  
24 WHEREFORE, Plaintiff respectfully requests that judgment be entered against  
25 Defendants and each of them for the following:

- 26 A. Actual damages;  
27 B. Statutory damages pursuant to 15 U.S.C. §1692k and California Civil Code  
28 §1788.30(a).

- 1 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and  
2 California Civil Code §1788.30(b) and §1788.30(c)  
3 D. For such other and further relief as the Court may deem just and proper.

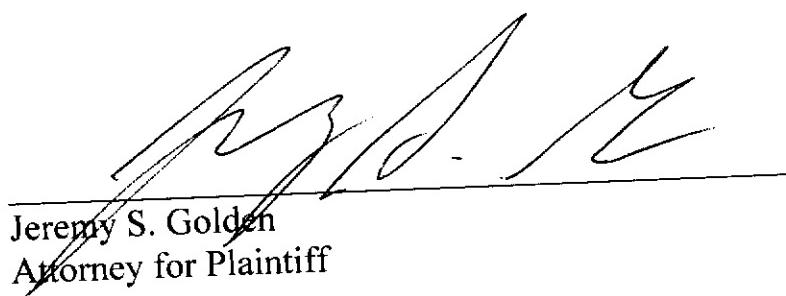
4 Date: 5/15/08

5   
6 Jeremy S. Golden  
7 Attorney for Plaintiff  
8

9  
10 **DEMAND FOR JURY TRIAL**

11 Please take notice that Plaintiff demands trial by jury in this action.  
12

13 Date: 5/15/08

14   
15 Jeremy S. Golden  
16 Attorney for Plaintiff  
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JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

SANDRA BAXTER

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

E-FILING

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeremy S. Golden (SBN 228007)  
Law Offices of Eric F. Fagan  
2300 Boswell Rd., Suite 211  
Chula Vista, CA 91914 Tel: 619-656-6656; Fax: 775-898-5471

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury — Med. Malpractice	422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
130 Miller Act	315 Airplane Product Liability	365 Personal Injury — Product Liability	423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	620 Other Food & Drug	<input type="checkbox"/> 450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 460 Deportation
151 Medicare Act	340 Marine	371 Truth in Lending	630 Liquor Laws	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	640 R.R. & Truck	<input type="checkbox"/> 480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage Product Liability	650 Airline Regs.	<input type="checkbox"/> 490 Cable/Sat TV
160 Stockholders' Suits	355 Motor Vehicle	390 Other Personal Injury Product Liability	660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service
190 Other Contract	Product Liability	395 Other Personal Injury Product Liability	690 Other	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
195 Contract Product Liability	360 Other Personal Injury			
196 Franchise				
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence	710 Fair Labor Standards Act	861 HIA (1395ff)
220 Foreclosure	442 Employment	Habex Corpus:	720 Labor/Mgmt. Relations	862 Black Lung (923)
230 Rent Lease & Ejectment	443 Housing/ Accommodations	530 General	730 Labor/Mgmt. Reporting & Disclosure Act	863 DIWC/DIWV (405(g))
240 Torts to Land	444 Welfare	535 Death Penalty	740 Railway Labor Act	864 SSID Title XVI
245 Tort Product Liability	445 Amer. w/Disabilities - Employment	540 Mandamus & Other	790 Other Labor Litigation	865 RSI (405(g))
290 All Other Real Property	446 Amer. w/Disabilities - Other	550 Civil Rights	791 Empl. Ret. Inc. Security Act	
	440 Other Civil Rights	555 Prison Condition		
			IMMIGRATION	FEDERAL TAX SUITS
			462 Naturalization Application	870 Taxes (U.S. Plaintiff or Defendant)
			463 Habex Corpus - Alien Detainee	871 IRS—Third Party 26 USC 7609
			465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court |
|---|---|--|

Transferred from

- |   |   |
|---|---|
| <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) |
|---|---|

- |   |
|---|
| <input type="checkbox"/> 6 Multidistrict Litigation |
|---|

- |   |
|---|
| <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 Various violations of the Fair Debt Collections Practices Act.

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**  
(PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE

5/16/08

SIGNATURE OF ATTORNEY OF RECORD

JFS M

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.** **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1333, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.